RECENT DECISIONS

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ADMIRALTY—JURISDICTION—SECURITY OF MINORITY INTEREST BEFORE SALE BY MAJORITY OWNER.—The majority owner had agreed to sell a vessel. The minority owner brings this action to enjoin the majority owner from selling the ship before giving a bond to the libellant to secure his share of the proceeds from the sale of the vessel. *Held,* an injunction will be decreed. *The Olga* (D. C. E. D. N. Y. 1918) 254 Fed. 439.

The court in the instant case enjoined the majority owner from "transferring title, unless a bond is given that upon the transfer, the minority owner who objects to such transfer will receive his share of the proceeds." Since part owners of a vessel are tenants in common, *Wright* v. *Marshall* (N. Y. 1870) 3 Daly 331; Benedict, Admiralty (4th ed.) § 187, the owners of a majority interest cannot dispose of the minor interests without the consent of the minority owners. 1 Parsons, Shipping & Admiralty 93; but see *Heath* v. *Hubbard* (1803) 4 East R. 110. The minority owner here appears to demand nothing more than a bond to secure an accounting for the proceeds which the majority owner will receive as fiduciary upon selling the ship, and must be deemed to have assented to the sale of his share of the vessel. It is established that a court of admiralty will not decree the specific performance of a contract for the sale of the ship, *The Eclipse* (1889) 135 U. S. 599, 10 Sup. Ct. 873; award damages for the breach of such a contract, *The Ada* (C. C. A. 1918) 250 Fed. 194; foreclose a mortgage on the ship, *Schuchardt* v. *Ship Angelique* (1856) 60 U. S. 239; *Bogart* v. *The Steamboat John Jay* (1854) 58 U. S. 399; or grant an accounting between the part owners of a vessel; *The H. E. Willard* (C. C. 1892) 52 Fed. 387; *The Steamboat Orleans* v. *Phoebus* (1837) 36 U. S. *176; none of these matters being thought to be of a maritime nature. See *The Eclipse, supra.* Certainly, if the court of admiralty refuses an accounting between the part owners of a vessel, it will not require a bond to secure an accounting. The court, however, drew an analogy between the principal case and a line of cases which require the majority owners of a vessel to give security at the request of the minority where the majority threatens to employ the ship in a manner objectionable to the latter. *Tunno* v. *The Betsina* (D. C. 1857) 24 Fed. Cas. No. 14,236. Such security, usually in the form of a bond, is to prevent the idleness of the ship, see *The Seneca* (C. C. 1829) 21 Fed. Cas. No. 12,670, and to protect the minor interest from maritime injury during the period of the disputed employment. See *The Apollo* (1824) 1 Hag. Ad. 306. Since all matters concerning the employment of a ship are maritime, this line of decisions is clearly sound. It is submitted, however, that the court in the instant

case erred by drawing an imperfect analogy and overlooked the fact that the purpose of the bond sought was to secure an accounting of the proceeds of a sale, and not to protect an interest in the ship from maritime loss.

CARRIERS—DUTY TO PROTECT PASSENGER FROM ASSAULT.—A passenger, while waiting for a train at a railroad station, was assaulted and robbed by strangers. The station agent saw the assault and, although called upon for help, did not interfere. *Held,* the carrier was liable. Although the trial court erred in its charge in assuming negligence on the part of the carrier's agent, because the robbery was in his presence, the error, on the evidence presented, was harmless. *Missouri, K. & T. Ry.* v. *Silber* (Tex. 1919) 209 S. W. 188.

In general, one is under no duty to protect another from assault, although interference is privileged in defence of relatives, servants, and, perhaps, others. Chapin, Torts, 8, 262. But *A* may stand in such a relationship to *B* that the law imposes a duty upon the one to defend the other. Accordingly, American authorities hold that a common carrier, Hutchinson, Common Carriers (2nd ed.) § 548, or an innkeeper, Beale, Innkeepers & Hotels § 171, must use reasonable means to protect passengers or guests from assaults, despite the fact that they are not insurers of their safety. *Connell's Ex'rs* v. *Chesapeake & O. Ry.* (1896) 93 Va. 44, 24 S. E. 467. Thus, the carrier is responsible for an assault committed upon a passenger: first, if it knew or should have known that the assaulting party was likely to make such an assault and nevertheless admitted him to or allowed him to remain in the cars, *Hillman* v. *Georgia R. & Banking Co.* (1906) 126 Ga. 814, 56 S. E. 68; secondly, if the passenger is assaulted in the presence of the carrier's servants, who could have prevented the injury but did not, although they were guilty of no other negligence. *Norfolk, etc., Ry.* v. *Birchfield* (1906) 105 Va. 809, 54 S. E. 879. There is no distinction, in the carrier's responsibility, between an injury caused by a stranger and one caused by a passenger, *St. Louis I. M. & S. Ry.* v. *Hatch* (1906) 116 Tenn. 580, 94 S. W. 671, or between an injury occurring in a station and one taking place upon a train. *Dean* v. *St. Paul Union Depot Co.* (1889) 41 Minn. 360, 43 N. W. 54. A difference in the degree of care required has been suggested, however, see *Tate* v. *Ill. Cent. R. R.* (Ct. of App. 1904) 26 Ky. L. Rep. 309, 81 S. W. 256, probably prompted by the greater difficulty in preventing assaults by those over whom the carrier has less control. On the other hand a carrier is not responsible: first, if the assault takes place without the knowledge or negligence of the carrier's servants, *Irwin* v. *Louisville & Nashville R. R.* (1909) 161 Ala. 489, 50 So. 62; secondly, if the carrier's servants knew of the assault when it took place, but were powerless to prevent it, and were guilty of no prior negligence. *Chicago, R. I. & P. Ry.* v. *Brown* (1914) 111 Ark. 288, 163 S. W. 525. The circumstances under which the carrier's servants will be deemed powerless to prevent an assault are difficult to determine. They must go far in risking their own safety to protect that of a passenger, *Anderson* v. *South Carolina, etc., R. R.*